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Raising the Tax Bar: Redefining the Roles of Accountants and Lawyers for a Practical Solution to the Multidisciplinary Practice Debate

Janice A. Alwin and Jason P. Eckerly*

I. INTRODUCTION

*"No ONE profession can do it all."*¹

Although this statement may seem like common sense, some accounting professionals and lawyers dispute its accuracy. The concept of a Multidisciplinary Practice (MDP), in which lawyers and accountants, or other nonlawyer professionals,² become partners in a combined practice for the purpose of creating a one-stop shop for multipractice service,³ has been the subject of a heated debate between the two professions.⁴ Proponents of MDPs argue that new

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1. *CPAs Have Everything to Gain: An Interview with the COO of the Global Credential Steering Committee*, J. ACCT., Sept. 2001, at 71 (quoting Judith R. Trepeck, CPA). Trepeck suggests that a global business credential should be available to qualified candidates in accounting, finance, law, and other business professions as recognition of "integrated knowledge." *Id.*

2. The debate "has largely focused on lawyers and accountants practicing together." Michael W. Loudenslager, *Cover Me: The Effects of Attorney-Accountant Multidisciplinary Practice on the Attorney-Client Privilege*, 53 BAYLOR L. REV. 33, 37 (Winter 2001); Robert K. Christensen, *At the Helm of the Multidisciplinary Practice Issue After the ABA's Recommendation: States Finding Solutions by Taking Stock in Harmonization to Preserve Their Sovereignty in Regulating the Legal Profession*, 2001 BYU L. REV. 375, 375 (2001) (noting the larger accounting firms were the initial proponents of MDPs, but acknowledging that the debate applies to all disciplines). However, as currently proposed, MDPs would allow for lawyers to partner with licensed professionals from an array of other disciplines, including physicians, investment bankers, architects, insurance brokers, health care providers, and financial planners. Victoria Kremiski, *Multidisciplinary Practices and the Main Street Lawyer*, 79 MICH. B.J. 1196, 1196 (Sept. 2000).

3. The practice areas shared by accountants and lawyers include family business succession planning, business organization and formation, employee benefits and executive compensation, mergers and acquisitions, wealth transfers, initial public offerings, bankruptcy workouts and reorganizations, and pension administration. *Business Owners Express Views on Multidisciplinary Practices Between Accountants and Lawyers*, News Release, Illinois CPA Society, Jan. 09, 2001, available at www.icpas.org; *MDP Survey Results: Illinois Business Executive's Opinions on Multidisciplinary Practices*, A Study Jointly Sponsored by: Legal Marketing Association, Martindale-Hubbell, Illinois CPA Society, Jan. 8, 2001 (hereinafter "Survey").

4. See Burnele V. Powell, *Business Law Symposium, Multidisciplinary Practice: Article Looking Ahead to the Alpha Jurisdiction: Some Considerations that the First MDP Jurisdiction Will*

technologies, the global expansion of the marketplace, and the increased sophistication of clients have created a demand for a more convenient, efficient, and cost effective way to offer business and legal services.⁵ They contend that MDPs will better serve today's clients because the clients will have access to a single resource for integrated financial, accounting, and legal services.⁶ Although opponents do not dispute that benefits to MDPs may exist, they argue that any potential benefits could not possibly outweigh the importance of preserving the core values of the legal profession – ethical independence and the attorney-client privilege.⁷

Despite the inability to reach a consensus on the MDP concept, all parties can agree on one thing – the lines that distinguish accounting and legal services have become blurred, in some cases beyond recognition. The time is right to draw new lines that map out novel and more distinct territories for accounting and legal professionals. Changes must be progressive: accounting and legal curricula reengineered, stricter ethical standards established, and a national, uniform Tax Bar⁸ and Regulatory Commission formed to regulate the modern tax law professional. The distinction between service providers should be unmistakable; no longer should practice overlap occur.

This article will address the need for redefining the scope of tax law and revisiting the requirements of tax and legal professionals so that the MDP debate may finally be resolved, or at least quieted. Part II will discuss the issues surrounding the MDP debate, which has been ongoing in the legal community and accounting industry. Part III will

Want to Think About, 36 WAKE FOREST L. REV. 101 (Spring 2001) (discussing the considerations that MDPs must address to maintain the core values of the legal profession); Mary C. Daly, *Choosing Wise Men Wisely: The Risks and Rewards of Purchasing Legal Services from Lawyers in a Multidisciplinary Practice*, 11 GEO. J. LEGAL ETHICS 217 (Winter 2000) (discussing the challenges lawyers will face if MDPs take shape); Elizabeth A. Ellis, *Allerton House Conference 2000: MDPs and the Legal Profession*, 88 ILL. B.J. 628 (Nov. 2000) (discussing the pros and cons of MDPs); *Reluctant Partners: Lawyers, CPAs Circle Warily*, ACCT. TODAY, July 5, 1999- July 25, 1999; Luisa Beltran, *Turf War Between Attorneys and Accountants Gets Nasty*, ACCT. TODAY, Nov. 24, 1997.

5. Donald S. Gray, *Multidisciplinary Practice of Law*, 41 ORANGE COUNTY LAW. 4, 5 (Apr. 1999).

6. *Id.*; Ellis, *supra* note 4, at 629 (discussing clients' needs and the value of MDPs).

7. Daly, *supra* note 4, at 226 ("risk of disclosing confidential client information, the danger of conflict of interests, and the threat of the loss of a lawyer's independent professional judgment are too great"); Randy Myers, *Lawyers and CPAs: How the Landscape Is Changing*, J. ACCT., Feb. 2000, at 74 (fee sharing "would compromise the independence of lawyers and the legal profession's unique attorney-client privilege").

8. The term "Tax Bar" is intended to encompass all areas of accountancy that require the application of the Internal Revenue Code, 26 U.S.C § 1 et. seq. (2002). Accordingly, the terms "accounting," "accountancy," and "tax" may be used interchangeably – as they often are in practice – unless otherwise noted.

discuss accounting and legal curricula and the developments in each. Part III will also include a discussion on the American Institute of Certified Public Accountants' (AICPA) decision to change the requirements necessary to sit for the Certified Public Accountant (CPA) examination and to propose a global business credential. Part IV will discuss the success of the Patent Bar and the requirements and policies applicable to admission. Part V will propose the creation of a Tax Bar and Regulatory Commission, similar to the Patent Bar and its regulatory branches, to ensure that tax lawyers are properly educated in accounting concepts before working on tax-related issues and to redefine tax law as an area in which only highly educated and highly regulated professionals can practice.

Part VI will conclude that the increasing complexity in accounting and tax law issues has overwhelmed members of the legal community and accounting industry; thus, prompting the need to reconsider how the work of tax accountants and lawyers is regulated and what standards must be implemented to maintain confidence in both professions.⁹ The establishment of a Tax Bar and Regulatory Commission is a practical way to resolve these issues and end the MDP debate.

II. THE MULTIDISCIPLINARY PRACTICE DEBATE

In August 1998, then incoming American Bar Association (ABA) President Phillip S. Anderson created the Commission on Multidisciplinary Practice (the "Commission") to study the need and effect of MDPs.¹⁰ The Commission focused particular attention on the impact of fee sharing between lawyers and nonlawyers, as well as the ethical rules and principles that would be applicable to all MDP professionals.¹¹ In June 1999, the Commission generally recommended that lawyers be allowed to enter into partnerships with nonlawyers and proposed that the ABA Model Rules of Professional Conduct, particularly Model Rule 5.4 - Professional Independence of a Lawyer, be

9. See e.g., Alan Levinson, *Subjective Accounting or Fraud?*, STRATEGIC FIN., Apr. 2002, at 63 ("complexity of corporate accounting has grown exponentially").

10. See American Bar Association, Center for Professional Responsibility, available at http://www.abanet.org/cpr/mdp_abt_commission.html (last visited Mar. 25, 2002) [hereinafter ABA website]. "[T]oday's rapid movement of nonlawyer organizations into the performance of services formally deemed to be reserved exclusively or largely for lawyers . . . may be 'the most important practice issues that our profession will face in its lifetime.'" Randolph W. Thrower, 2001 Erwin N. Griswold Lecture Before the American College of Tax Counsel: *Is the Tax Bar Going Casual - Ethically?*, 54 TAX LAW. 797, 800 (Summer 2001) (quoting then ABA President Phillip S. Anderson).

11. See *supra* note 10.

revised to accommodate MDPs.¹² However, the ABA House of Delegates rejected the proposal and directed the Commission to continue its study to determine whether such a change would be in the best interest of the public.¹³ To date, the ABA has not made a final ruling, and MDPs continue to be a hotly debated issue.¹⁴

A. *The Argument For MDPs*

Recent data show that the public strongly favors a change in legal ethics rules to allow for the benefits of MDPs.¹⁵ The strongest argument in favor of MDPs is the convenience of the client – one-stop shopping of business, financial, accounting, and legal services. The average client often does not understand the extent of the professional's expertise and assumes, incorrectly, that all professionals in that particular industry share the same level of competence and expertise.¹⁶ To-

12. *Id.* Model Rule 5.4 of the ABA Model Rules of Professional Conduct provides, in pertinent part:

(a) A lawyer or law firm shall not share legal fees with a nonlawyer,

* * *

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyers to render legal services for another to direct or regulate the lawyer's professional judgment in rendering legal services

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

* * *

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

MODEL RULES OF PROF'L CONDUCT R. 5.4 (1990) (professional independence of a lawyer).

13. See ABA website, *supra* note 10; John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 *FORDHAM L. REV.* 83, 86 (Oct. 2000); William J. Linklater, *Multidisciplinary Practice: The Debate Continues*, *CBA REC.*, Sept. 2000, at 10.

14. See *supra* note 4. New York, however, has become the first state, along with the District of Columbia, to approve MDPs for attorneys, effective November 1, 2001. The Appellate Division of the New York Supreme Court added Part 1205, "Cooperative Business Arrangements Between Lawyers and Nonlegal Professionals," to its Disciplinary Rules of the Code of Professional Responsibility. N.Y. COMP. CODES R. & REGS. tit. 22, § 1205 (2001). The New York rules provide "clear direction" for lawyers in MDPs by providing that the legal ethics rules apply absent a clear separation of legal and nonlegal services. *New York Approves MDPs for Attorneys*, The Academy of Multidisciplinary Practice, Inc., available at <http://www.mdacademy.com/info/newyork.htm> (last visited Mar. 27, 2002).

15. Loudenslager, *supra* note 2, at 35 n.4 (citing a poll conducted by the U.S. Chamber of Commerce and the American Corporate Counsel Association in October 1999 and a survey conducted in September 1999 of "purchasers of legal services").

16. See Mary Ann R. Baker-Randall, *Handling Cases Outside Your Practice Area*, *GPSolo*, Oct./Nov. 2002, at 14. "A patient would not go to a podiatrist to treat breast or prostate cancer . . . Nevertheless, clients don't understand the same is true about legal expertise. To them, all lawyers should be equally competent in all areas of the law." *Id.*

day's business issues are often so intertwined that the difference between professional services and providers is hard to distinguish.¹⁷ Clients of MDPs will arguably have access to a wider knowledge base at the same, if not lower, cost as hiring just one specialized professional today.

More important than cost savings, the client would avoid the risks involved with taking business advice from a lawyer who may not be trained in the relevant areas of expertise.¹⁸ Although many lawyers may have other credentials or business experience, lawyers generally do not have the business training or education necessary to render tax and financial advice.¹⁹ Lawyers cannot do it all, but neither can any other licensed professional. A coordination of legal and nonlegal services into one practice minimizes the risk that a pertinent legal or business issue will be missed. Moreover, the client will likely benefit from the competition between disciplines because business professionals will be forced to work harder to satisfy and keep the client.

Some proponents contend that, even without the consent of the ABA, MDPs are already – and quite naturally – starting to arise in the marketplace.²⁰ Law firms have recognized that offering a mix of legal and nonlegal services can better “serve their clients’ needs and expand their income base.”²¹ These firms have joined forces with such disciplines as accounting, health care and medicine, architecture and de-

17. See Survey, *supra* note 3.

18. Edith Y. Wu, *Why Say No to Multidisciplinary Practice?*, 32 LOY. U. CHI. L.J. 545, 554 (Spring 2001) (noting that attorneys may recognize nonlegal problems but not have the training or experience to solve the problems themselves).

19. *Id.*; see also Joan Mahoney, *The Future of Legal Education*, 33 U. TOL. L. REV. 113, 116-17 (suggesting that legal education today does not adequately prepare future lawyers beyond the basic legal doctrines); Carl N. Edwards, *In Search of Legal Scholarship: Strategies for the Integration of Science into the Practice of Law*, 8 S. CAL. INTERDISC. L.J. 1, 2-6 (suggesting that joint degree programs offer a way for law students to better prepare themselves in specialized areas of business and law).

20. The Big Five accounting firms employ thousands of attorneys already, and now, at least two of the Big Five have formed or announced intentions to form alliances with law firms. Thrower, *supra* note 10, at 805; Jack Baker, *Larger Firms Press Ahead*, J. ACCT., Feb. 2001, at 76; News Report: Professional Issues, *E&Y First of Big Five in U.S. Market to Ally with Law Firm*, J. ACCT., Jan. 2001, at 11; Kremski, *supra* note 2, at 1196 (referring to statements by Larry Ramirez, then chair of the ABA General Practice, Solo & Small Firm Section). “I don’t think that we can just ignore the issue [of MDPs]. . . . The fact is, it’s already occurring, it’s already occurred.” *Id.*; Wu, *supra* note 18, at 552 (noting that companies have already begun adding ancillary business units so that they may better compete with other service providers). Interesting to note, law firms began adding nonlawyer business professionals with expertise in complex nonlegal areas to their staff several years ago much to the chagrin of accountants, who felt that such positions lacked a successful career path for accountants within the firm. See Judith R. Trepeck, *Lawyers in CPAs’ Clothing*, J. ACCT., Oct. 1992, at 119 (proposing a MDP-like affiliation with law firms to maintain a competitive edge in the marketplace).

21. *Supra* note 20.

sign, insurance, investment banking, and financial planning to gain a competitive edge in the marketplace, as well as to better serve their clients.²² Strategic alliances between tax and law firms, which exist just outside the scope of a true MDP, have been formally announced to the public.²³ Maintaining separate management structures, however, has been the key to operating the alliances within the realm of today's professional guidelines without treading too far into the MDP debate.

Under current law, lawyers who currently offer and provide legal services and ancillary business services are still subject to the strictures of the legal ethics rules whether or not they consider themselves members of an MDP. A change in the ethics rules could arguably provide further protection to clients by establishing distinct parameters within which licensed professionals would have to demonstrate compliance before holding themselves out to the public as MDP service providers. A change in the ethics rules could only be truly effective if the new rules were effectually enforced. For now, the barrier to entry remains the belief that nonlawyers do not share the high level of professional ethics expected of lawyers and that a blend of disciplinary rules would lower the standards and, ultimately, harm the client.

B. *Arguments Against MDPs*

Despite the potential benefits of MDPs, opponents point out that most clients have reservations when it comes to the combination of professions. Results of one prominent survey indicate that the convenience of one-stop shopping and single billing were of little importance to business executives.²⁴ Arguably, only small businesses and less-sophisticated clients would benefit from such a concept because large, sophisticated companies have the resources to seek out professionals in all specializations and fields.²⁵ Moreover, some opponents simply prefer the separation of disciplines because they have found satisfaction in the traditional roles that each profession plays in the marketplace.

Perhaps the strongest argument against MDPs, however, is that the ethics rules of nonlegal professions are far less stringent than those of the legal profession and that allowing nonlawyers to partner with lawyers would likely result in the relaxation of professional ethics, partic-

22. See Kremski, *supra* note 2.

23. See *supra* note 20.

24. Survey, *supra* note 3.

25. See Ellis, *supra* note 4, at 630 (citing one business executive who feels that large multinational corporations have access to international legal and business professionals).

ularly a lawyer's independence of judgment.²⁶ Additionally, the clients would no longer benefit from the same protections afforded them under the attorney-client privilege that exists today. Opponents argue that clients would suffer if MDPs were allowed to exist under any standard lower than that of the legal profession because clients have learned to rely upon the core values of the legal profession.²⁷

1. Independence

Some critics argue that the adoption of MDPs would seriously undermine one of the legal profession's core values, independence in judgment.²⁸ This comes at a time when the accounting profession has considered relaxing its rules on professional independence to "accurately reflect developments in society and business."²⁹ The legal profession has always stressed the importance of exercising independence in judgment,³⁰ whereas the AICPA has claimed that "[o]ur profession's core values always have been and will be: integrity, competence and objectivity."³¹ While other disciplines also recognize the need to exercise judgment free of conflict and outside influence, they tend to do so with an eye toward modernization – and, perhaps, practicality. The accounting profession, in particular, has noted that changes in the marketplace have made it nearly impossible to remain completely uninfluenced by, or uninterested in, the outcome of client matters.³² Whether the existence of truly independent judgment is a concern

26. Wu, *supra* note 18, at 559-67 (suggesting that MDPs would create a tension between the lawyer's loyalties to his client and the loyalties to his nonlawyer business partner). "[B]usiness trends and global factors are important today, but neither should have the impact of lowering the standards and reducing the safeguards that protect the public in an effort to accommodate big business, whose primary concern is an economic one." *Id.* at 560. *But cf.* Powell, *supra* note 4, at 118 (arguing that "it strains logic to suggest that simply because lawyers divide incomes with nonlawyers, performance of a lawyer's ethical duties would be jeopardized").

27. See *supra* note 7 and accompanying text.

28. Katherine L. Harrison, Comment, *Multidisciplinary Practices: Changing the Global View of the Legal Profession*, 21 U. PA. J. INT'L ECON. L. 879, 911 (Winter 2000) (offering two reasons why this assumption is incorrect: competitive pressures already exist in the legal profession as do pressures from nonlawyers in situations involving "in-house counsel, government lawyers, and legal service attorneys").

29. Brian Caswell & Catherine Allen, *The Engagement Team Approach to Independence*, J. ACCT., Feb. 2001, at 58 (discussing the proposed change from "firmwide" independence to the less restrictive "engagement team" approach, which narrows the number of employees to which the independence rules apply).

30. See *supra* note 12.

31. *Landmark Accounting Reform Legislation Signed into Law*, CPA LETTER, Sept. 2002, at 1.

32. *Id.* For example, with the widespread growth in the stock market and the globalization of the economy, it is more than likely that every employee in an accounting firm could, independently or through a family member, hold stock or some other interest (e.g., shares in a mutual fund investment) in a majority of that firm's clients.

with actual merit is certainly debatable.³³ The focus of any business, law firms included, is to make a profit; thus, it is not only the MDP proponents whose judgment could be “clouded by the chase for the almighty dollar.”³⁴

Placing a nonlawyer at the head of a MDP would place a lawyer in a position where the interests of management – particularly, its financial interests – are in competition with the interests of the client. Multidisciplinary practice opponents contend that it would be nearly impossible for a lawyer to maintain professional independence if a nonlawyer were in control of the practice because the lawyer’s duty of loyalty to his client and his employer would be at odds.³⁵ This conflict would likely undermine the lawyer’s professional independence and create the risk of placing profits before the client.

In reality, though, lawyers already work in MDP-like arrangements as in-house counsel and as lawyers for “government entities, trade associations, and other not-for-profit organizations.”³⁶ In these arrangements, the lawyers report to nonlawyers and, where the client is someone other than the employer, the lawyer owes a duty of loyalty to both the client and the employer. Despite these situations, opponents argue that MDPs would somehow be different. They offer no empirical support for the theory that lawyers will succumb to the pressures of nonlawyer management, but only continue to argue that the possibility alone should be enough of a deterrent.

2. Attorney-Client Privilege

MDP opponents may be justified in their concern over the effect of MDPs on the attorney-client privilege. Although some accountant-client and tax preparer-taxpayer communications are protected,³⁷ and the scope of these communications continues to broaden,³⁸ account-

33. “This argument is without any significant evidentiary basis The substantial financial pressures placed on lawyer independence are a serious concern in traditional law firms as well as organizations controlled by nonlawyers.” Dzienkowski & Peroni, *supra* note 13, at 137-39.

34. *But cf.* Schauerte & Hernandez, *infra* note 56 (quoting Jerold S. Solovy, chairman of Jenner & Block and an outspoken MDP critic who believes that “people who were driving the MDP” are merely after increased profits).

35. *But see* Dzienkowski & Peroni, *supra* note 13, at 139; Harrison, *supra* note 28.

36. *See id.*

37. Loudenslager, *supra* note 2, at 61-72 (discussing the extension of attorney-client privilege to accountant-client communications under common law where the communications are made in order for an attorney to provide legal services or advice to a client and the extension of the statutory privilege afforded to tax preparers under 26 U.S.C. § 7525 to the extent that the communications would be considered privileged if undertaken between an attorney and a taxpayer client).

38. *See e.g.*, Molly McDonough, *Attorney-Client Privilege to Apply to Tax Initiative: IRS Clarifies Policy that Attempts to Smoke out Tax Shelters*, ABA J. E-REPORT, at <http://www.abanet.org/>

ants and tax professionals still do not benefit from the same confidentiality protections as those available to lawyers.³⁹ The attorney-client privilege extends to nearly all communications between a lawyer and his client, has a strong foundation in the federal rules of evidence and common law,⁴⁰ and is invaluable to a client in need of counsel.

Critics fear that communications between clients and nonlawyer professionals in MDPs may actually impair the privileged communications between clients and their MDP lawyers.⁴¹ If a client were to communicate information to his lawyer, then discuss the same issue with a nonlawyer in the MDP who was assisting the client's lawyer with a nonlegal component of the issue, the privilege would be waived.⁴² Unless the privilege is extended across disciplines, clients could not benefit from the advice of nonlawyers on such information without first waiving the privilege.⁴³ Extending the privilege to nonlawyers would undermine the strength, and one of the core values, of the legal profession. This issue remains a point of contention between the legal profession and accounting industry, and recent events have further divided the two sides.

C. *How The Enron Debacle Has Fueled The Debate*

The bankruptcy of Enron Corporation ("Enron") and the indictment of its auditing firm, Andersen LLP, have added further controversy to the MDP debate. The energy trader filed for bankruptcy on December 2, 2001.⁴⁴ Rumors of managerial impropriety and document shredding by Enron's auditors sparked international media frenzy and instigated a criminal investigation by the U.S. Department of Justice (DOJ).⁴⁵ On March 14, 2002, just three months after En-

journal/ereport/a5irs.htm (Apr. 5, 2002) (discussing the IRS statement "promising that submissions of documents and legal opinions detailing tax shelters will not be used in other IRS matters").

39. *Id.*

40. See FED. R. EVID. 501.

41. See generally Michael W. Loudenslager, *supra* note 2, at 37. See also Louis F. Lobenhofer, *The New Tax Practitioner Privilege: Limited Privilege and Significant Disruption*, 26 OHIO N.U. L. REV. 243 (2000).

42. See *supra* note 41. If a client shares privileged communications with a third party, he will have waived the protection of the attorney-client privilege.

43. *Id.*

44. See Enron Corp.'s official website, at <http://www.enron.com>; see also *In re Enron Corp.*, No. 01-16034 (Bankr. S.D.N.Y. Dec. 2001).

45. See Robert Manor & Naftali Bendavid, *Andersen to Cut Jobs as Many Partners Flee*, CHI. TRIB., Apr. 5, 2002, at 1. To provide employers and investors with accurate and current information, both Enron and Andersen created special press pages on their websites. See <http://www.Enron.com/corp/pressroom> (last visited Feb. 9, 2003) and <http://www.andersen.com/press.htm> (last visited Apr. 18, 2002).

ron's bankruptcy petition was filed, the DOJ unsealed an indictment charging Andersen LLP with obstruction of justice.⁴⁶ The accounting firm was charged with shredding documents and destroying electronic information related to the audit of Enron in anticipation of a federal investigation.⁴⁷

The Enron debacle has placed the accounting industry under severe scrutiny. Media reports have been filled with stories of fictitious partnerships used to hide Enron's enormous debt and auditors who ignored signs of impropriety and material misstatements.⁴⁸ To make matters worse, hundreds of Enron employees and investors lost entire pensions and life savings as a result of the company's downfall.⁴⁹ Although Enron's management is likely to be held accountable for its part in this travesty,⁵⁰ the public's full attention focused on Andersen, the long-trusted accounting firm and its audit team.⁵¹

With criminal charges pending, Andersen was intent on damage control. The global firm sold its international and national divisions, initiated a mass layoff of its workforce, sought the guidance of Former Federal Reserve Chairman Paul Volcker, and retained a noted bankruptcy and reorganization expert.⁵² Although Andersen's demise is imminent, it is the future of the accounting industry as a whole that concerns many. Volcker's recommendations included a complete restructuring of Andersen's accounting practice and, more specifically, a complete segregation of its audit functions from all other aspects of the firm's operations.

D. *The Trickle Effect – Finding Out That Enron Was Not Alone*

Unfortunately, Enron was just the tip of the corporate fraud iceberg. Since Enron's troubles began, other large corporations have confessed to similar accounting irregularities and filed for bankruptcy, including Adelphia Communications, Qwest Communications, Global

46. See Deputy Attorney General Transcript, *News Conference – Arthur Andersen Indictment*, available at <http://www.usdoj.gov/dag/speech/2002/031402newsconferencearthurandersen.htm> (last visited Apr. 18, 2002).

47. *Id.*

48. Susan Cornwell, *Accounting Overseer Urges Reforms*, CHI. TRIB., Mar. 20, 2002, at B3; Robert Manor, *Andersen on Offensive with Strategy Shift*, CHI. TRIB., Mar. 27, 2002, at B1.

49. *Id.*

50. However, Enron has been successful in shifting some of the blame for its collapse to Andersen. See, e.g., *Rein in the Accountants*, HARTFORD COURANT, Jan. 25, 2002, at A14. This has, in turn, begun calls for auditing/consulting reform. *Id.*

51. See Robert Manor, *Congress Races to Regulate Auditors*, CHI. TRIB., Mar. 31, 2002, at 1.

52. Delroy Alexander & Naftali Bendavid, *Andersen Dismisses 7,000 U.S. Employees: Ex-Enron Auditor Duncan Expected to Plead Guilty*, CHI. TRIB., Apr. 9, 2002, at 1; Delroy Alexander, *Andersen to Accept Volcker Proposal*, CHI. TRIB., Mar. 29, 2002, at B1.

Crossing, and WorldCom Inc.⁵³ Their corporate executives, directors, and auditors also face allegations of wrongdoing. This continuing demise of corporate ethics within publicly traded firms has raised the ire of the American public; yet, it is the accounting profession that has taken a good portion of the blame.⁵⁴

Although the fate of Enron, Andersen, and the other *criminal* corporations is yet to be seen, it is clear that the accounting profession is about to face some major changes as a result of this crisis. These recent events have been referred to as the “death knell” to MDPs.⁵⁵ “Lawyers ought to learn the lesson that being all things to all people is not a strong position to be in if your central service falls into question In the wake of [Enron], the feeling is [that] the safest ground is to keep your businesses separate.”⁵⁶ Whether these are words of wisdom is a matter of personal opinion, but the wise know that now is not the time to fear change; rather, it is time to embrace it.

E. *Mandating Ethics With The Sarbanes-Oxley Act Of 2002*

On the heels of an ethics fallout in corporate America, the legislature has enacted the Sarbanes-Oxley Act of 2002 (“SOA”),⁵⁷ which imposes disclosure and financial report certification requirements, as well as stricter corporate governance rules. The SOA, which the Securities and Exchange Commission enforces, is an attempt to rein in corporate officers from the freestyle management practice that has developed over the years. Perhaps more importantly, the SOA’s swift enactment was intended to rebuild public confidence after the economic travesty that resulted from recent events.

Of particular significance to the MDP debate are the provisions of the SOA that essentially acknowledge a need for multidisciplinary expertise. These provisions include a requirement that the SEC appoint, and oversee, a new Public Company Accounting Oversight Board

53. Chris Nolter, *Worldcom Seeks 5-Month Extension*, DAILY DEAL, Oct. 23, 2002.

54. Sixty-six percent of Americans have money invested in IRAs and 401(k)’s, the value of which has plummeted with each new accounting scandal. John Zogby, State Department Foreign Press Center Briefing (Oct. 25, 2002).

55. Robert Lennon, *MDP Death Knell?: The Enron Affair May Have Made Kindling Wood of a Giant Sequoia*, LAW., Apr. 2002, at 10.

56. Mark Schauerte & Nathaniel Hernandez, *Enron Throws Fuel on Hot Debate over Multidisciplinary Practices*, CHI. LAW., Apr. 2002, at 8 (quoting Gary T. Johnson of Jones, Day, Reavis & Pogue, anti-MDP coalition floor leader in the House of Delegates).

57. Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (2002). See also *How the Sarbanes-Oxley Act of 2002 Impacts the Accounting Profession*, available at www.aicpa.org/infol/Sarbanes-Oxley2002.asp (last visited Oct. 28, 2002).

("PCAOB").⁵⁸ The PCAOB may be made up of no less than two CPAs and three "non-CPAs" – meaning that at least three members cannot now be nor in the past have been a CPA.⁵⁹ Another pro-MDP provision allows a person to be appointed as chair if he is a CPA, but not if he has practiced accounting during the five years preceding his appointment.⁶⁰ In other words, the SOA currently mandates that the PCAOB be comprised of individuals with accounting and non-accounting, presumably business and/or legal, expertise to ensure that at least one of the represented professions will recognize the various elements of corporate and accounting fraud.

On the other hand, the SOA exhibits some anti-MDP characteristics as well. It statutorily prohibits accountants, particularly auditors, from offering certain services to clients for which the accountants are performing audit functions.⁶¹ If an accounting firm has been hired to perform an audit, that firm may not also render valuation or appraisal services, legal or other expert services, actuarial services, or management services to that same client.⁶² In this way, the SOA specifically targets the conflicts that arise when one professional performs work for one client but owes a fiduciary responsibility to another. For example, an auditor performs the audit for its client but owes a duty of full disclosure to the client's shareholders and the investing public, whereas a lawyer performs legal work for and owes a duty of confidentiality strictly to its client.⁶³

At the same time, the SOA, and, practically speaking, the business world itself, mandates that corporate CEOs and CFOs in charge of financial management must now certify the accuracy of the company's financial statements.⁶⁴ In essence, the SOA splits the accounting industry into two divisions: audit functions and all other forms of accounting.⁶⁵ The audit side maintains the inverse relationship between

58. Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (2002). See *SEC Announces Members of the PCAOB, AICPA Issues Statement*, available at www.aicpa.org/news/2002/p021025b.asp (last visited Nov. 1, 2002).

59. Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (2002).

60. *Id.*

61. *Id.*

62. *Id.*

63. See generally Lawrence A. Cunningham, *Sharing Accounting's Burden: Business Lawyers in Enron's Dark Shadows*, 57 BUS. LAW. 1421 (Aug. 2002). "Lawyers and auditors must . . . understand that the other has different professional objectives and duties. The concern of lawyers is confidentiality, while that of auditors is disclosure; lawyers are advocates for their clients, while auditors are watchdogs for the public. *Id.* at 1436 (citing *United States v. Arthur Young & Co.*, 465 U.S. 805, 817-18 (1984)).

64. Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (2002).

65. *Id.*

representation of the client and duty to the public, while the accounting side takes on a lawyer-like role in which the accountant both represents and owes a fiduciary duty to its client and no one else.

Perhaps it will take severing the audit function all together from its tie to the accounting industry to eliminate the animosity between accountants and lawyers. Whatever the outcome of the MDP debate, business and legal professionals must adapt to the changing marketplace and learn from their prior experiences. Client issues demand integrated knowledge more than ever before. The globalization of the economy will only continue to add to this mandate. The time has come to reengineer the education system and better prepare our professionals for the issues that they will face.

III. ACCOUNTING AND LEGAL CURRICULA

It is easy to understand why so much overlap exists in accounting and legal services. Lawyers fill many nonlawyer positions, and nonlawyers have expanded their services to include those that lawyers traditionally provide.⁶⁶ Although many disciplines have reason to cross over into the legal profession, accounting is perhaps the only other profession that is exposed to so much of the law in everyday practice.⁶⁷

Accounting professionals are first exposed to business law issues as part of their education and training.⁶⁸ Likewise, law students are generally taught that tax issues arise with every business transaction and that a good lawyer always considers the tax implications that accompany a deal. Recognizing that education is one of the best ways to ensure that professionals can perform their jobs to the best of their abilities, it is important to consider that how the education is structured may lend itself to misrepresentation of fact and law. Accordingly, the education system must be sound for it to be effective.

66. Thrower, *supra* note 10, at 804-05; Lloyd "Buddy" Turman, *Look out Lawyers, Here We Come!*, ACCT. TODAY, Jul. 5-25, 1999, at 1.

67. Robert A. Prentice, *The Case for Educating Legally-Aware Accountants*, 38 AM. BUS. L.J. 597, 604 (Spring 2001). "Tax practice is law . . . [A]ccountants also must know enough law to avoid illicitly engaging in its practice." *Id.* at 614.

68. *Id.* at 599 (noting that "there is substantial evidence that no accountant is thoroughly educated absent substantial exposure to a wide range of substantive legal subjects, as well as to legal and ethical reasoning" and citing numerous empirical studies as support).

A. Accounting Curricula

1. General Overview

The accounting education community has been diligent in its quest for the ideal accounting curriculum, and with good reason. The decline in accounting graduates in the past ten years has encouraged the profession to reconsider its image.⁶⁹ The AICPA has implemented its “first-ever direct marketing campaign aimed at students” and listed student recruitment as one of the profession’s top four priorities.⁷⁰ Recent events in the business sector have called the integrity of the profession into question,⁷¹ and to make matters worse, the demand for integrated and technologically advanced knowledge has left traditional accountants behind the times.⁷² Like other business disciplines, the accounting profession must evolve if it is to survive in the global market.

Endless surveys continue to provide insight into the minds of employers and veteran accounting and financial executives about what it takes to succeed in corporate America.⁷³ “[A] better understanding of business processes, improved communication skills,” and more practical job preparation are just a few of the “KSAs” – knowledge, skills, and abilities – that experts claim most entry-level accountants

69. See Needles, *infra* note 85; Alexander L. Gabbin, *The Crisis in Accounting Education*, J. ACCT., Apr. 2002, at 81-82 (noting a 4% decline in accounting majors since 1990 and an expectation that the rate of decline will continue to increase unless accounting education can be improved).

70. Needles, *infra* note 85; *Recruiting For The Profession*, CPA LETTER, Apr. 2002, at G1; James G. Castellano, *Chair's Corner*, CPA LETTER, Feb./Mar. 2002, at 6.

71. See *supra* notes 44-56 and accompanying text. “[T]he image of accounting was not helped by the highly publicized business scandals of the 1980s More recently, there was adverse publicity closer to home in the form of so-called “audit failures” and accounting irregularities reported in the press. The taint of unethical behavior that attaches to business is very hard to shake.” Needles, *infra* note 85, at 22.

72. “[M]any accounting educators have failed to restructure accounting curriculum to equip graduates with the tools and expertise they need in today’s business world In this new marketplace, traditional accountants are a dying breed.” Gabbin, *supra* note 69, at 82. But see Ameet Sachdev, *Scandals Put Accounting on a List for Students*, CHI. TRIB., Oct. 2, 2002, at 1 (“Accounting classes . . . are suddenly in vogue”). The recent corporate accounting scandals, see *supra* Part II.C., have peaked the interest of many students with an eye toward fraud detection and investigation; however, “most business schools are not rushing to reshape their curriculum in response to the scandals.” *Id.*

73. Bill Cummings, et al., *Meeting the Challenge: The University Accounting Program Corporate America Needs*, MGMT. ACCT. Q., Winter 2001, at 4, 5 (proposing new accounting curricula in response to results of surveys commissioned by the Institute of Management Accountants, the Gary Siegel Organization, and the Financial Executives Institute); see also David Christensen & David Rees, *Communication Skills Needed by Entry-Level Accountants*, CPA LETTER, Oct. 2002, at D2 (noting that the specific communication skills include “strong writing,” “command of the language” and “the ability to make informative, interesting and persuasive presentations”).

lack.⁷⁴ Still others contend that traditional accounting curricula is not enough, and that “no accountant is thoroughly educated absent substantial exposure to a wide range of substantive legal subjects, as well as to legal and ethical reasoning.”⁷⁵

The American Accounting Association (AAA),⁷⁶ the AICPA, and large accounting firms have been investigating the need to restructure the education of accountants for many years.⁷⁷ Changes in the marketplace and business demand that the traditional accounting baccalaureate degree is no longer sufficient to equip members of the accounting profession with the capabilities needed on the job.⁷⁸ However, the recommended changes do not consist of increasing the accountant’s exposure to technical accounting rules and methodologies; instead, committees and employers insist that the accounting professional of today “develop a wide range of professional skills, including communication skills, intellectual skills, and interpersonal skills,”⁷⁹ and be ready to apply critical thinking skills and analytical reasoning to help clients make effective and efficient economic decisions.⁸⁰ In other words, the ideal accountant would think like a lawyer.

2. CPA Examination And The 150-Hour Requirement

The AICPA and the Board of Examiners (BOE) for the CPA examination have recognized the need to better prepare accountants and, simultaneously, protect the CPA credential from dilution. In 1998, the AICPA voted to require 150-hours of education as a condition to sit for the CPA examination.⁸¹ The AICPA and the National Association

74. Cummings, *supra* note 73, at 5. The survey results also indicated that a direct knowledge of management accounting skills used in most manufacturing jobs was in demand. *Id.*

75. Prentice, *supra* note 67, at 599.

76. See AAA’s official website, at <http://www.accounting.rutgers.edu/raw/aaa.htm>. The AAA is a voluntary organization whose members are interested in accounting education and research. The organization’s mission is to promote worldwide excellence in accounting education, research, and practice.

77. Background Information On the 150-Hour Education Requirement for CPA Certification and Licensure, available at <http://www.aicpa.org/members/div/careers/150bkg.htm> (last visited Mar. 27, 2002); <http://www.aicpa.org/members/div/career/edu/150hcdh.htm> (last visited Feb. 9, 2003); <http://www.aicpa.org/states/uaa/150hour.htm> (last visited Feb. 9, 2003) [hereinafter 150-Hour Background]; Cummings, *supra* note 73, at 13.

78. *Id.*

79. 150-Hour Background, *supra* note 77.

80. Prentice, *supra* note 67, at 627 (suggesting that accounting education lacks the focus on reasoning and critical thinking skills that forms the foundation of legal education). “The future . . . accounting professional[s] will be . . . competent communicators, having excellent research skills, and the ability to interpret, analyze and integrate information from many sources.” See Castellano, *supra* note 70.

81. 150-Hour Background, *supra* note 77.

of State Boards of Accountancy (NASBA)⁸² urged that all fifty states adopt legislation mandating the 150-hour requirement.⁸³ This change meant that undergraduate accounting and business students would have to take, on average, an additional thirty hours of course credit – the equivalent of receiving a graduate or Master degree in business, tax, or accounting – to qualify to take the CPA examination.⁸⁴ Thus, although less than thirty percent of the nations' participants pass the CPA examination each time it is administered,⁸⁵ the AICPA was still compelled to limit the number of eligible participants.

The CPA examination is divided into four sections: Auditing, Business Law & Professional Responsibilities, Financial Accounting & Reporting, and Accounting & Reporting.⁸⁶ The division of examination topics reflects the AICPA, NASBA, and the BOE's acknowledgement that members of the accounting profession, particularly those who have passed the CPA examination, have, at a minimum, a working knowledge of auditing, business law, financial accounting, and reporting.⁸⁷ This assertion, if you will, that trained accountants possess multidisciplinary skills, strays far from the proverbial green-eyeshade-

82. See NASBA's official website, at <http://www.nasba.org>. Fifty-four state boards of accountancy comprise NASBA's membership and help oversee the administration of the Uniform CPA examination.

83. See AICPA/NASBA Guide Implementing the 150-Hour Requirement, available at <http://www.aicpa.org/states/uaa/150hour.htm> (last visited Mar. 27, 2002) [hereinafter AICPA/NASBA Guide]. The recommended statutory language for the education requirement is, in pertinent part: "... at least 150 semester hours of college education including a baccalaureate or higher degree conferred by a college or university acceptable to the Board, the total educational program to include an accounting concentration or equivalent" *Id.*

84. *Id.* This is based on an average 120-hour requirement for undergraduate universities' business and accounting programs. Some colleges and universities have altered their accounting programs in response to the change. To cite just one example, in 2000, the Department of Accountancy at the College of Commerce and Business Administration at the University of Illinois proposed changes to its accountancy program, including the revision of its Bachelor of Science in Accountancy and Master of Accounting Science programs and the implementation of a Certificate in Accountancy and Bachelor/Master in Accountancy programs, each of which has since been adopted. Proposals To The UICI Senate Committee On Educational Policy, May 5, 2000, available at <http://www.cba.uiuc.edu/accountancy/programs.htm> (last visited Mar. 27, 2002). The Department cited the 150-hour requirement as the reason for its proposal. *Id.*

85. See CPA Examination Results, available at <http://www.nasba.org> (last visited Mar. 27, 2002); see also Belverd E. Needles, Jr., CPA, *Picture This: There Are Ways to Recruit More Students as Accounting Majors, Which Can Only Mean a Rosier Picture for the Profession's Future*, INSIGHT, Apr./May 2002, at 21.

86. Nathan T. Garrett, *Transitioning & Conditioning: Recommendations & Rationale*, CPA EXAM ALERT, Jan./Feb. 2002, at 3 (discussing the proposal to change the examination sections into: Auditing & Attestation, Financial Accounting & Reporting, Regulation, and Business Environment & Concepts at the launching of the computer-based CPA examination).

87. Michael A. Bolas, *Examination Structure & Length Approved by BOE*, CPA EXAM ALERT, Jan./Feb. 2002, at 4 (noting that "the assertion to the public is that a candidate has demonstrated minimum competency in each of the independent sections").

wearing-bean-counter image for which accountants were traditionally known.

3. Global Business Credential

The efforts of the accounting profession to keep up with the changes in the business world actually adds to the confusion of the MDP debate. Recently, for example, the AICPA proposed the implementation of a Global Business Credential, initially using "XYZ" as a placeholder,⁸⁸ but later entitled "IISBP" as the acronym for "International Institute of Strategic Business Professionals," the proposed sponsoring organization.⁸⁹ Despite an active campaign, AICPA members voted down the bylaw amendment that would have enabled the "granting of an interdisciplinary global credential by an affiliated entity to qualified persons who seek to obtain it."⁹⁰ If the amendment had been passed, the credential would have been available to CPAs and non-CPAs and would have been touted as an optional or supplemental credential for CPAs and other business professionals who demonstrate "a wide range of competencies in diverse disciplines."⁹¹

The proposed credential is just another way that the accounting profession has tried to elevate its members to a higher level in the hierarchy of business and legal professionals. The credential would have called for candidates to hold an advanced degree, pass a rigorous examination, have eight years, five years if a CPA, of business and financial experience, commit to uphold the IISBP's ethical standards, and commit to continuous professional education.⁹² Despite its failure, the concept of a global credential will not be put to the wayside. AICPA members will use the research accumulated and the feedback received during the IISBP campaign to continue to explore ways to maintain the value of the accounting profession and "to adapt to the profound changes that are taking place in the marketplace."⁹³

As accounting curricula improves and as interest in the profession takes root, the legal profession will face more competition. The scope of accounting services has already been expanding into other disci-

88. Jim Emerson, *The XYZ Credential*, J. ACCT., Oct. 2001, at 69 (suggesting that the time is right to recognize "cross-disciplinary knowledge").

89. *The Proposed Global Credential*, Information for Member Vote on Proposed Amendment to AICPA Bylaws, Oct. 29, 2001, at 6 [hereinafter Amendment Proposal].

90. *Members Vote Down Bylaw Amendment: Leadership Promises to Use Findings to Reinforce Profession's Value and Reputation*, CPA LETTER, Jan. 2002, at 1 [hereinafter Member Vote].

91. Amendment Proposal, *supra* note 89, at 7.

92. *Id.* at 8-9.

93. Member Vote, *supra* note 90.

plines and, consequently, reached other markets. Accountants who build strong client relationships often understand the client's personal and business needs better than any other service provider.⁹⁴ If it is not willing to partner with accountants in MDPs, then the legal profession must better prepare its lawyers to meet the needs of today's client in order to meet the challenge of the global marketplace.

B. *Legal Curriculum*

Unlike that of the accounting profession, legal education remains somewhat steadfast. It is embedded in an institution of tradition that uses the Socratic method to teach the primary doctrines of law: torts, contracts, property, constitutional law, procedure, and criminal law.⁹⁵ While most law schools have recognized that "the practice of law has become more global in scope,"⁹⁶ the typical legal curriculum has "little subject area concentration and virtually no specialization."⁹⁷

Contemporary law school curricula, however, embraces the need for interdisciplinary scholarship.⁹⁸ More and more, courses are taught by practicing attorneys whose experiences in specialized areas of law complement their teaching. Students themselves enter law school with practical experience in other disciplines and tend to be more aware of the direction their career paths will take.⁹⁹ "Legal research and writing has expanded considerably from the one or two hours it generally occupied thirty years ago and now frequently includes drafting exercises along with, or instead of, the traditional memoranda and briefs."¹⁰⁰ Thus, slowly but surely, the trend in legal curriculum is toward developing practical skills and specialized training.

94. Edward J. Gabrielse, *Spawning Season: A Recently Released Business Services Study Reveals a New Phase Of Growth for Today's Accounting Firm*, INSIGHT, Apr./May 2002, at 44 ("accountants now are becoming the preferred source of all professional and advisory needs among business managers").

95. See Mahoney, *supra* note 19, at 115.

96. Dean Charles Cramton, *Joint Degree Programs*, 18 DICK. J. INT'L. L. 489, 489 (Spring 2000). "Today it is virtually impossible for our graduates not to be involved in international legal matters We need to broaden our views of legal education and the increased global culture must also be recognized." *Id.*

97. Linda R. Crane, *Interdisciplinary Combined-Degree and Graduate Law Degree Programs: History and Trends*, 33 J. MARSHALL L. REV. 47, 51 (Fall 1999).

98. *Id.* at 50. "Academic disciplines, such as economics, political science, natural sciences, and literature, supplement the study of law." *Id.* "For the most part, law has recognized the need for interdisciplinary scholarship, as well as its practical implications for the legal process." Edwards, *supra* note 19, at 3.

99. Crane, *supra* note 97, at 51.

100. Mahoney, *supra* note 19, at 115.

C. *Interdisciplinary Programs*

One way that law schools expand their curriculum, and compete for student admissions, is with the offering of joint degree and advanced graduate degree interdisciplinary programs. Undergraduate universities, business schools, and law schools continue to add joint degree programs to their curriculum, such as the J.D./M.B.A., the M.D./J.D., and the J.D./LL.M.¹⁰¹ These programs allow law students to enhance their law degree with knowledge and training from other disciplines, and provide the students an opportunity to more easily specialize in their field of interest.

How effective these interdisciplinary programs are in teaching specialized skills is unclear.¹⁰² Although the candidate earns two degrees, he is able to do so in less time than a student who follows two separate degree programs. This is possible because the student can double-count classes that are applicable to both fields of study.¹⁰³ Alternately, some colleges consider undergraduate courses in determining the extent of degree requirements.¹⁰⁴ At other colleges and universities, the courses that satisfy these “advanced” degree programs are often the exact same courses that satisfy lower-level degree programs.¹⁰⁵

Although the benefits of interdisciplinary education and training are becoming more and more essential, such an inconsistent overlap of credentials could prove to create confusion in the eyes of the client. It may be unclear whether the professional’s credentials accurately reflect his level of education and training. Forcing the public to make

101. Some of the colleges and universities that offer joint degree programs in taxation include University of Missouri-Kansas City (J.D./LL.M. in Taxation and J.D./LL.M. with concentration in Estate Planning), <http://www.umkc.edu/umkc/catalog/html>; University of Baltimore (LL.M. in Taxation, Combined J.D./LL.M. in Taxation, and MS in Taxation), <http://law.ubalt.edu/gradtax/gradtax2.html>; Chicago-Kent College of Law (LL.M. in Taxation and Combined J.D./LL.M. in Taxation), http://www.kentlaw.edu/academics/llm/llm_tax.html; New York University School of Law (LL.M. in Taxation and J.D./LL.M. in Taxation), <http://www.law.nyu.edu/depts/admissions/info/joint/tax.html>.

102. Greg Burns, *Jury Still out on Dual Degrees; Grad Students Seek Cross-Training Edge*, CHI. TRIB., Apr. 29, 2002, at 1.

103. For example, a J.D./LL.M. candidate may be able to apply one advanced accounting course toward degree requirements, whereas an LL.M. candidate who had taken the same advanced accounting course to satisfy his J.D. requirements would need an additional course to apply toward his LL.M. requirements.

104. For example, at DePaul University College of Law, <http://www.law.depaul.edu>, a law student who holds an undergraduate business degree may satisfy the J.D./M.B.A. requirements in just three years, whereas students holding non-business related undergraduate degrees must take an additional year of course study to satisfy the same joint degree program.

105. “Most LL.M. programs . . . simply consist of a year of courses selected from the same electives available to J.D. candidates.” Edwards, *supra* note 19, at 6.

sense of a professional's capabilities is irresponsible on the part of the profession, but where the line is drawn and by whom is also problematic. The business, financial, and accounting industries, as well as the legal profession, have not yet addressed this issue even though it is certainly one that deserves scrutiny.

D. *MDP Curricula*

With the advent of the Internet, colleges and universities across the world have developed on-line courses and degree programs.¹⁰⁶ As with MDPs, the justification for such programs is the convenience of the client – in this case, the student – and the need to keep up with the ever changing landscape of the business world.¹⁰⁷ Michigan State University, together with the Esperti Peterson Institute,¹⁰⁸ and sponsored by the American General Financial Group, has launched the Academy of Multidisciplinary Practice, Inc., which “offers the first virtual education courses leading to accredited multidisciplinary designations.”¹⁰⁹ The success of such a program is yet to be determined; but, for now, the fact remains that business professionals have one more opportunity to add a professional designation to their resumes, no matter how misleading it may be.

Professional education and accreditation must be better regulated to avoid public misrepresentation. An onslaught of under-skilled so-called professionals would likely do exponentially greater damage to the public's trust than the implementation of MDPs with complete and full disclosure. This is not to say that the MDP debate lacks merit; each side has a sound argument, which is why the debate will likely remain unresolved until an alternate proposal is set forth. The most logical step in the progression of professional development and regulation is to find a similar system, one that is in place and that actually works, and use it as a model on which to base the solution. This model is the Patent Bar.

106. See Trepeck, *supra* note 2, at 71 (noting that “Stanford and Harvard Business School are looking into a partnership that would offer a credential over the Internet”).

107. See the official website for The Academy of Multidisciplinary Practice, Inc., available at <http://www.mdpacademy.com>.

108. The Esperti Peterson Institute is a think-tank devoted to multidisciplinary scholarship and “is a laboratory of selected Fellows who research and create new professional planning models, protocols, and strategies through research and collaboration.” See its official website, at www.epinstitute.org.

109. Academy courses are accredited by the Estate and Wealth Strategies Institute at Michigan State University, a global think-tank for estate and wealth planning strategies. The Academy is “the only resource of its kind dedicated to helping professionals ethically compete in an environment of MDPs.” *Id.*

IV. THE PATENT BAR:¹¹⁰ A MODEL

Lawyers who wish to practice before the United States Patent and Trademark Office (USPTO) and hold themselves out as “patent lawyers” must register with the USPTO and submit to an examination, known as the patent bar.¹¹¹ Only those attorneys that the USPTO recognizes may represent inventors.¹¹² These lawyers are held to a higher standard in the legal profession because of the compound nature of patents. The Office of Enrollment and Discipline (OED), through its Director, is charged with overseeing the patent bar register.¹¹³ Currently, there are more than 25,000 active registered patent lawyers who have met the rigorous standards to be admitted to the patent bar.¹¹⁴

A. *Requirements For Registration*

“The regulations for admission to practice before the USPTO are similar to, yet more extensive than, regulations for admission to a state bar.”¹¹⁵ To apply for registration to the patent bar, candidates must first demonstrate good moral character and repute by passing a character investigation that the USPTO administers.¹¹⁶ Additionally, candidates must possess “the legal, scientific, and technical qualifications necessary to enable him to render applicants for patents valuable service” and competence “to advise and assist applicants for patents in the presentation and prosecution of their applications.”¹¹⁷ To fulfill the requirements, candidates must hold a baccalaureate degree in engineering, a “hard” science, or other equivalent subject matter; specific scientific or technical training; or practical engineering or scientific experience.¹¹⁸ Finally, candidates must take and pass the patent bar examination unless they have actively served for at least four years in the patent examining corps of the USPTO, in which case

110. This is a general discussion of the requirements set forth by the USPTO and is not intended to cover the full scope of the patent bar requirements and regulations. The authors wish only to provide a foundation for its proposal, discussed *infra*.

111. Practice Before the Patent and Trademark Office, 37 C.F.R. §§ 10.5, 10.6, 10.7 (2001).

112. *Id.*

113. Director of Enrollment and Discipline, 37 C.F.R. § 10.2 (2001).

114. See Harry I. Moatz, Survey of Registered Practitioners In Patent Cases, *available at*: <http://www.uspto.gov> (last visited Mar. 1, 2002).

115. Gail Fruchtmann, et al., *Questions and Answers*, 85 LAW LIBR. J. 221, 230 (1993).

116. Requirements for Registration, 37 C.F.R. § 10.7(b)(i) (2001).

117. 37 C.F.R. § 10.7(a)(2)(ii), (iii) (2001).

118. *Id.*

they would qualify for a waiver.¹¹⁹ “The USPTO maintains a registry of attorneys admitted to practice patent law and also publishes the list of registered patent attorneys and agents.”¹²⁰

B. *Who May Be Admitted To Practice*

While the patent bar is noteworthy for its additional requirements for admission, perhaps the most intriguing point of the patent bar registration requirements is that not every patent bar member need be a lawyer. An exception exists for patent “agents” who otherwise satisfy the registration criteria.¹²¹ The USPTO made this revolutionary exception because it recognized that some nonlawyers had sufficient knowledge and training to represent a patent applicant before the Patent Bar without having been trained as a lawyer.¹²² While this is likely a rational decision, the exception runs contrary to the belief that the purpose of the patent bar was to hold lawyers to a higher standard, as it openly admits nonlawyers to the practice of law.

C. *Membership and Practice*

The success of the patent bar is seen through its continued membership and the absence of controversy. Registration to the patent bar has generally remained consistent since its inception. While the OED has authority to remove members from the register,¹²³ there is no current record of impropriety or scandal involving patent lawyers that would call into question the success of the OED in regulating the profession. The patent bar seems to quietly exist within the legal profession without the need for change or improvement.

Tax law has often been analogized to patent law because both are complex bodies of law that require a foundation of technical knowledge on the part of the practitioner.¹²⁴ Accordingly, it is appropriate to look to the success of the patent bar as a model for the creation of a Tax Bar.

119. *Id.* Applicants may choose to take examination while still in law school. “The USPTO will hold the examination results until the applicant finishes law school and is admitted to practice law by a state bar association.” Fruchtman, *supra* note 115, at 230.

120. Fruchtman, *supra* note 115, at 230.

121. Registration of Attorneys and Agents, 37 C.F.R. § 10.6 (2001).

122. *Id.*

123. Removing Names From The Register, 37 C.F.R. § 10.11 (2001).

124. ABA Comm. on Ethics and Prof'l Responsibility, Informal Op. 1241 (1973) (discussing partnerships between an enrolled agent of the Internal Revenue Service and an attorney and its analogy to a partnership between a lawyer and a patent agent licensed to practice before the USPTO).

V. CREATING A TAX BAR

A. *The Need For A Higher Standard*

As the old saying goes, only “two things in life are guaranteed: death and taxes.”¹²⁵ If there is truth to this adage, then tax law is unique: it is the one area of the law that all businesses must deal with on a regular basis. This intersection of businesses and tax provides tax professionals, both lawyers and accountants, with a dependable stream of revenue. More importantly, though, it presents these professionals with the opportunity to sell additional services to their clients. During the course of their employment, these professionals may impress upon their client the fitness of their respective firms, accounting or law, to handle other needs of the client, such as consulting services or representation in litigation. However, the ever-increasing complexity of tax laws only contributes to the client’s confusion as to which professional is best suited to handle a tax law issue: an accountant or a lawyer. While both professions may seem equally capable in a sales presentation, a client should have more straightforward guidelines on which to base its hiring decision. The creation of a higher standard, namely the creation of a tax that could hold tax professionals accountable, would simultaneously meet the needs of clients, lawyers, and accountants.

1. Increased Complexity In Tax And Legal Issues

Despite its underlying purpose, tax reform will continue to provide job security for tax professionals. The Internal Revenue Code (the “Code”) continues to become more complex as the years pass.¹²⁶ The Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGT-RRR”)¹²⁷ alone added 441 changes to the Code. With changes in legislation like this, it becomes a daunting task for the average business professional to stay abreast of the current tax laws. Perhaps the only way to address such change is to introduce new legislation that will

125. Anonymous.

126. “Events are moving so quickly these days that I can’t even be sure that the information I give you today will still be relevant tomorrow.” Harvey Coustan, *Quick Time: Things in the Tax World are Changing at Maximum Velocity – and Not Always for the Better*, INSIGHT, Oct./Nov. 2002, at 46; Eileen Ambrose, *Tax Time Arrives, Along with Confusion: 2001 Rebates Top List of Errors*, CHI. TRIB., Mar. 12, 2002, at 7.

127. The Economic Growth and Tax Relief and Reconciliation Act of 2001, Pub. L. No. 107-16, § § 635, 636, 115 Stat. 38 (2001).

redefine the role of the tax professional with respect to its work in the legal arena.¹²⁸

2. Client Confusion And Professional Accountability

The changes in tax laws are even more confusing to the public, and understandably so. As it stands today, individuals and business entities are held accountable for their tax-related decisions even if they receive advice from a competent tax professional, barring fraud or willful and wanton conduct. The government, in effect, charges the public with the task of not only reading but comprehending the Code.¹²⁹

The burden placed upon individuals and businesses becomes even greater when they decide to seek professional guidance because of the overlap in disciplines.¹³⁰ No clear standards currently exist to guide the client. Tax issues do not clearly fall within a lawyer's traditional role as an advocate, or into an accountant's role as an independent auditor, but instead tax issues fall into a gray area somewhere along the lawyer/accountant continuum. In essence, the client is charged with understanding the rules of professional responsibility and settling the MDP debate that exists between the two professions. This not only places too great a burden on the client, but also creates an unhealthy competition between the two professions. The creation of a tax bar would alleviate such confusion and offer clients a clear answer to their tax problems.

B. *The Tax Bar And Regulatory Commission – A Long-Awaited Resolution*

Implementing a Tax Bar and Regulatory Commission would alleviate the breakdown in the accounting and legal professions. This proposal provides a long-awaited resolution to the MDP debate and, also, to the concern that courts and practitioners often lack the competency and skills necessary to analyze and resolve tax law matters. In addition, the establishment of a Tax Bar and Regulatory Commission will provide clear direction and practice parameters to tax and legal professionals so that there will no longer be any doubt as to what constitutes the authorized practice of tax law.

128. See Cunningham, *supra* note 63, at 1438 (discussing the option of legislating accounting principles and rules that accountants and lawyers must follow as a matter of law, as is done in Europe).

129. 26 U.S.C. § 1 et. seq. (2002).

130. See *supra* note 3 (discussing the areas of practice that overlap between accountants, lawyers, and other business professionals).

1. National Court Of Appeals For Tax

Today, courts of general jurisdiction generally decide complex accounting and tax law issues. The U.S. Tax Court does exist to hear limited tax disputes; however, its scope does not extend to the appellate level.¹³¹ The proposal to create a National Court of Tax Appeals surfaced years ago and, although it has never come to fruition, the rationale behind it remains true.¹³² The idea behind the creation of specialized courts is to ensure competency of practicing lawyers and judges, to maximize available resources, and to streamline court proceedings that fall within particular areas of the law.¹³³ Although the quantity of cases requiring specialized attention of the courts may seem minimal, increased uniformity in case decisions, as well as reduced litigation, are seen as major benefits of such a tribunal.¹³⁴

A Tax Bar would provide the benefits that the proponents of the National Court of Tax Appeals envision. A court of specialized, or specially trained, tax law professionals would try and decide cases at all levels: trial, appellate, and the court of last resort. The regulatory component of the Tax Bar would establish clear guidelines for the members to follow with respect to procedure. Moreover, there would finally exist a clear understanding of what exactly constitutes the authorized practice of tax law.

2. Risk Of Unauthorized Practice Of Law

Opponents of MDPs have argued that opening the door to partnerships between legal and nonlegal professionals would encourage the unauthorized practice of law (UPL).¹³⁵ The overlap in professional services puts service providers at risk of UPL where the distinction between tax and legal services is unclear. The growing number of cases in which service providers are charged with the unauthorized

131. See the official site of the United States Tax Court, at <http://www.ustaxcourt.gov/about.htm>.

132. See generally *The Erwin N. Griswold Lecture: Theodore Tannenwald, Jr., Before the Annual Meeting of the American College of Tax Counsel*, 15 AM. J. TAX. POL'Y 1 (Spring 1998); Thomas E. Baker, *Imagining The Alternative Futures of the U.S. Courts of Appeals*, 28 GA. L. REV. 913 (Summer 1994); Harold C. Petrowitz, *Federal Court Reform: The Federal Courts Improvement Act of 1982 – And Beyond*, 32 AM. U. L. REV. 543 (Winter 1983).

133. See *supra* note 132.

134. *Id.*

135. See Ellis, *supra* note 4, at 636 (noting that “there are differing opinions about what constitutes ‘legal services’” and recommending that the ABA establish a uniform definition of UPL “to protect consumers and ensure that they receive . . . legal services from qualified legal providers”).

practice of law is demonstrative of just how unclear the distinction is between tax and legal services.¹³⁶

The case that best demonstrates the battle between emerging MDPs and UPL is *Texas v. Arthur Andersen*.¹³⁷ In 1997, a group of Texas lawyers filed a complaint with the Unauthorized Practice of Law Committee of the Texas Supreme Court (the "Committee") against Arthur Andersen ("Andersen").¹³⁸ The complaint alleged that Andersen "engaged in the unauthorized practice of law by offering 'attorney only' services and filing petitions in the Tax Court."¹³⁹ Complaints concerning "attorney only" services have included "estate planning, as well as drafting corporate and partnership documents, compensation agreements, stock option agreements, and severance agreements."¹⁴⁰ The Committee dismissed the complaint in a four-line letter after just one hour of questioning.¹⁴¹

While the complaint was dismissed, this case is important because it demonstrates that lawyers and accountants alike are confused as to where the mysterious practice of law "starting line" begins. The creation of a Tax Bar which sets forth clear guidelines for tax law matters would reduce the risk of UPL claims against the unwary professional, as it would provide such a line. This clarity will provide relief not only to practitioners, but also to clients who stand to lose the most where professionals are unqualified or incompetent.

C. *The Need For Immediate Implementation*

The immediate implementation of the Tax Bar and Regulatory Commission would signal a commitment to professional competence at a time when the public's confidence in accounting and legal professions is in doubt. The registration requirements would be based on

136. See, e.g., *In re New York County Lawyers Ass'n*, 78 N.Y.S.2d 209 (N.Y. App. Div. 1948), *aff'd sub nom.*, *In re Bercu*, 87 N.E.2d 451 (N.Y. 1949); *Agran v. Shapiro*, 273 P.2d 619 (Cal. App. Dep't Super. Ct. 1954); *Gardner v. Conway*, 48 N.W.2d 788 (Minn. 1951); *Westmoreland County v. Rodgers*, 693 A.2d 996 (Pa. Commw. Ct. 1997). For discussions of UPL see Michael J. Herzog, Note and Comment, *Tax Dispute Representation: The Time is Ripe to Allow Certified Public Accountants Access to the Tribunal*, 18 J.L. & COM. 355 (1999); Elijah D. Farrell, *Accounting Firms and the Unauthorized Practice of Law: Who Is the Bar Really Trying to Protect?*, 33 IND. L. REV. 599 (2000).

137. 674 S.W.2d 923 (Tex. 1984).

138. Luisa Beltran, *Turf War Between Attorneys and Accountants Gets Nasty*, ACCT. TODAY, Nov. 24, 1997, at 5.

139. *Id.*

140. Larry Smith, *Attorneys v. CPAs . . . Texas Case Crystallizes Competitive Practice Issues for Major Firms*, 17 NO. 4 OF COUNS., Feb. 16, 1998, at 1, 8.

141. *Andersen Cleared in Landmark Legal Services Case*, INT'L ACCT. BULL., Aug. 13, 1998, at 1. See also Arthur S. Hayes, *Accountants vs. Lawyers – Bean Counters Win*, NAT'L L.J., Aug. 10, 1998, at A4; Jim Kelly, *'Legal Practice' Charges Fail*, FIN. TIMES, Aug. 7, 1998, at 4.

those that the OED set forth for the patent bar. The entity charged with administering the Tax Bar, which would include officers from the AICPA and the ABA, would organize a public awareness campaign to gain interest from the legal community and accounting industry and to establish public support for the higher standard.

1. Standards For Admission¹⁴²

The standards for admission to the Tax Bar will set a new benchmark for proficiency in tax-related services. First, like the patent bar, standards for those eligible to sit for the Tax Bar will be raised. Second, the exam given for admission will test the examinee's ability to provide tax-related services to the client. Finally, those admitted to practice will be required to meet certain requirements to maintain their membership.

a. Requirements to Sit for the Tax Bar Examination

In order to be eligible to sit for the Tax Bar exam, candidates must possess the requisite legal, accounting, and technical training necessary to provide valuable services to business and tax clients. An applicant must hold a baccalaureate degree in accountancy, finance, business administration, marketing, statistics, or other equivalent subject matter. The applicant must also hold a J.D. or equivalent from an ABA accredited law school and be a member in good standing of a state bar association. This requirement helps to ensure that all prospective members have the combined business and legal foundation necessary to understand or, at a minimum, recognize tax implications to a client or particular transaction.

b. The Examination

The examination itself will consist of two parts and, like most professional-level examinations, will include a combination of essay and multiple choice questions. Part I of the examination will assess the applicant's knowledge of fundamental accounting and tax law issues, as well as any peripheral issues that are typically encountered in practice. Candidates who have already passed the CPA examination or who have earned an LL.M in taxation from an ABA accredited law school will be eligible to take an abbreviated version of this section of the exam. This exception considers the value of the candidates ex-

142. Many of the ideas for admission standards were modeled after the American Bar Association Standing Committee on Specialization's Model Plan of Specialization. See Standing Comm. On Specialization, American Bar Ass'n, *Model Plan of Specialization* (1983) (adopted by House of Delegates Aug. 15, 1979).

isting credentials and practical training without completely exempting any candidate from the first part of the examination. More importantly, it ensures that all accepted applicants will have demonstrated high comprehension of the subject matter.

Part II of the examination will test the applicant's understanding of professional responsibility. Prospective members must be able to demonstrate good moral character and repute. This section of the examination will measure the applicant's understanding of generally applicable standards of professional conduct and certain ethical issues that arise in the practice of tax law. There will be no exceptions or exemptions for this section. Notwithstanding a passing score on Part II of the examination, members of the Tax Bar must be capable of passing both sections of the examination before they will be accepted to ensure only the highest degree of professional integrity among its ranks.

c. Maintaining Membership

To remain a member in good standing with the Tax Bar, the attorney must pursue continued education and exhibit a high level of competence through peer review. The member must complete at least ten hours of continuing legal education every two years through approved programs. This will create a Tax Bar that is well versed in changes affecting their areas of expertise and will allow members to counsel clients in the face of these changes.

Peer review of all members will ensure their continuing fitness as members of the Tax Bar and help to reduce malpractice. Each member will be required to submit four peer references, who must also be members of the Tax Bar or judges, from individuals that are familiar with the member's work and who can give an informed opinion with respect to the member's competence. Peer review will take place every five years following the member's admission to the Tax Bar. The list of members who are up for peer review, as well as the review committee's findings will be open to all members of the Tax Bar.

2. The Effect Of Higher Standards

While this proposal may seem revolutionary and far-reaching, the effect will be the creation of a Tax Bar that is able to better serve the client's tax law needs while employing the highest level of professional ethics. The public will benefit not only from the members' expertise, but also from the assurance that any member's inferior work will not be tolerated. Disciplinary measures will be put in place and members will be held accountable for unlawful, unethical, or unacceptable acts

in the eyes of the Tax Bar. Tax law is a unique area of law that warrants its own bar and standards. Mandating a higher level of professional excellent and ethics will, in turn, instill a higher level of client confidence in members of the Tax Bar and members of the Bar in general. The MDP debate will no longer exist as between accountants and lawyers because their new roles will be clear. Tax Bars members will be recognized as the most qualified professionals for certain accounting and tax law issues.

VI. CONCLUSION

The time has come to take immediate action in regulating the practice of tax law. No longer should the public be subjected to confusing titles and insignificant credentials. Tax professionals must be held to a higher standard to protect the interests of the client. The legal profession and accounting industry should band together to form a Tax Bar and Regulatory Commission whose members must demonstrate integrated knowledge in accounting and financial matters and, in addition to being admitted to a state bar, pass a rigorous Tax Bar examination. These members would also be subject to mandatory continuing tax and legal education, as well as peer review every five years. Once properly implemented and operational, the Tax Bar will be the source of justice that clients have long deserved.

